

ALAMEDA COUNTY

Audit Report

RESTITUTION FINES AND COURT-ORDERED RESTITUTION

July 1, 2001, through June 30, 2002



STEVE WESTLY
California State Controller

February 2004



STEVE WESTLY
California State Controller

February 25, 2004

The Honorable Patrick O'Connell
Auditor-Controller
Alameda County
1221 Oak Street, Room 249
Oakland, CA 94612

Mr. Art Sims
Court Executive Officer
Alameda County Superior Court
1225 Fallon Street, Room 209
Oakland, CA 94612

Dear Mr. O'Connell and Mr. Sims:

The State Controller's Office has completed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board by Alameda County for the period of July 1, 2001, through June 30, 2002.

The audit disclosed that:

- The county did not distribute the 10% rebate revenues to county agencies responsible for restitution collection; and
- The county did not include a 10% administration fee on restitution fines.

If you have any questions, please contact Jerry McClain, Chief, Special Audits Bureau, at (916) 323-1573.

Sincerely,


VINCENT P. BROWN
Chief Operating Officer

VPB:jj

cc: Jim Mullally
Restitution Specialist
District Attorney's Office
Catherine Close, Executive Director
Victim Compensation and
Government Claims Board
Laura Hill, Manager
Revenue Recovery Division
Victim Compensation and
Government Claims Board

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Audit Report

Summary

The State Controller's Office (SCO) performed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board (Board) by Alameda County for the period of July 1, 2001, through June 30, 2002. The last day of fieldwork was June 19, 2003.

Alameda County remittances to the State Treasurer for restitution fines and warrants paid to the Board for restitution court orders were correct. The points discussed in the Findings and Recommendations section may affect the amount of those remittances through enhanced collection efforts or additional fees collected.

In addition, the reimbursement of court-ordered restitution is hindered due to various reasons. For example, pursuing the reimbursement for claims that are remitted after the sentencing date may not be cost-effective due to the additional court costs involved, unless the courts and the county are willing to implement a coordinated process among the courts, the District Attorney's Office, and the Probation Department.

Background

State statutes govern the distribution of court revenues, which include restitution fines and court-ordered restitution. Whenever the State is entitled to a portion of such money, the court is required by *Government Code* Section 68101 to deposit the State's portion of court revenues with the county treasurer as soon as practical and to provide the county auditor with a monthly record of collections. This section further requires that the county auditor transmit the fund and a record of the money collected to the State Treasurer at least once a month.

Government Code Section 68103 requires that the State Controller determine whether all court collections remitted to the State Treasurer are complete. *Government Code* Section 68104 authorizes the State Controller to examine records maintained by any court. Furthermore, *Government Code* Section 12410 provides the State Controller with general audit authority to ensure that state funds are properly safeguarded.

The Board was concerned with the accurate and effective administration of restitution fines and court-ordered restitution with respect to the victim compensation program. Consequently, on January 1, 2003, an interagency agreement was made between the SCO and the Board to conduct six field audits of county and court collection systems as they relate to restitution fines and court-ordered restitution.

Objective, Scope, and Methodology

In accordance with the terms of the agreement, the objective of this audit was to determine whether the county and the courts completely and accurately remitted restitution fines and Board court-ordered restitution in a timely manner to the State Treasurer for the period of July 1, 2001, through June 30, 2002.

Pursuant to the interagency agreement, the SCO conducted a field audit of the Alameda County Superior Court and collections entities to assess whether:

- The courts have properly ordered restitution fines and orders in accordance with *Penal Code* Section 1202.4; and
- The policies and procedures established by the courts and the county collection entities ensure that financial assistance made by the Board in accordance with *Government Code* Sections 13959 through 13969 was properly collected and reimbursed to the Restitution Fund.

In order to meet the objectives, the auditors reviewed the revenue processing systems within the county's Superior Court, Probation Department, District Attorney's Office, Collections Department, and Auditor-Controller's Office.

The auditors performed the following procedures:

- Reviewed the accuracy of distribution reports prepared by the county, which show court revenue distributions to the State, the county, and cities located with the county;
- Gained an understanding of the county's revenue collection and reporting processes by interviewing key personnel and reviewing documents supporting the transaction flow (Appendix);
- Analyzed the restitution accounts reported in the county's monthly cash statement for unusual variations and omissions;
- Performed tests to identify any incorrect distributions and expanded any test that revealed errors, to determine the extent of any incorrect distributions; and
- Selected 50 cases from the Board's restitution schedule of accounts receivable to determine the timeliness and status of repayments (Schedule 1).

The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. The SCO did not audit the county's financial statements. The auditor considered the county's management controls only to the extent necessary to plan the audit. This report relates to an examination of court-ordered restitution and restitution fines remitted and payable to the State of California. Therefore, the SCO does not express an opinion as to whether the county's court revenues, taken as a whole, are free from material misstatement.

Conclusion

Alameda County restitution fines in the amount of \$1,123,616 remitted to the State through the TC-31 process for fiscal year 2001-02 were determined to be correct. Alameda County reported \$39,472 in direct reimbursement payments for court-ordered restitution to the Board during the fiscal year.

The Board remitted \$115,439 to the county under statutory rebate provisions during the fiscal year. These monies are intended to enhance the collection effort related to restitution fines and orders. The county deposited the rebate into the county's Central Collection Division's fund for general collection activities.

**Views of
Responsible
Official**

The SCO issued a draft audit report on November 6, 2003. Steve Manning, Chief Deputy Auditor, responded by letter dated November 21, 2003 (attached), agreeing with the audit results with the exception of Finding 1. The court did not respond to the draft audit report.

Restricted Use

This report is solely for the information and use of Alameda County and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.



JEFFREY V. BROWNFIELD
Chief, Division of Audits

Schedule 1— Random Sample Results July 1, 2001, through June 30, 2002

A random sample of 50 cases was selected from the Victim Compensation and Government Claims Board's Schedule, VCP paid out vs. Restitution Ordered. These cases were analyzed in three ways: (1) destination of offender, (2) claim date, and (3) current collection effort. Each of these areas may have an impact on the accuracy and effectiveness of the court-ordered restitution collection process. From these cases the following percentages were derived:

A. Destination of Offender

State:

State Correctional Facility	36%
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Local:

Formal Probation	46%
Conditional Sentencing	16%
Juvenile	0%
Not Convicted	2%

B. Claim Dates

Before Sentencing	76%
After Sentencing	22%
No Record	2%

C. Current Collection Effort*

No Further Action to Be Taken	36%
Continuing Effort	12%
Collection Satisfied or in Process (State)	30%
Collection Satisfied or in Process (Local)	22%

* Information provided by county staff.

Findings and Recommendations

FINDING 1— Restitution 10% rebate not applied to collection activity

Alameda County did not distribute \$115,439 of the statutory restitution rebate revenues to the Probation Department or other county agencies responsible for the collection enhancement of restitution fines and orders. The revenue has been posted to the Central Collection Division's fund for general collection activities when the operating cost is offset by the department's comprehensive collection program. The error occurred because the county misinterpreted *Government Code* Section 13963(f) to include general collection activity. Failure to make the required distribution of the statutory rebate has not provided the intended collection enhancement under the statute.

Government Code Section 13963(f) requires the State to pay a rebate to the county Probation Department or the county agency responsible for collection of restitution fines and orders owed to the Restitution Fund under Section 13967. Additionally, the rebate shall be considered an incentive for collection efforts and shall be used for furthering the collection efforts. The rebates shall not be used to supplant county funding.

Recommendation

The county should allocate the 10% rebate revenues to the Probation Department, District Attorney's Office, or other county agencies responsible for collection of court-ordered victim restitution on behalf of the Victim Compensation and Government Claims Board.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

County's Response

Alameda County Central Collections, is the only County agency within Alameda County responsible for collections. The Probation Department and District Attorney's Office are not equipped nor do they have the desire to perform collection work.

Approximately two years ago, at the recommendation of the Victim Compensation and Government Claims Board, Central Collections began receiving the 10% rebate revenues for the collection of restitution fines and orders. The Board determined that Central Collections was the only agency in Alameda County performing the function of collection for restitution fines and orders. Confirmation can be obtained by speaking directly to the Board.

The funds received by Central Collections have been used for the enhancement of collection of restitution fines and orders. Using the funds from the 10% rebate program allowed Central Collections to have staff present in restitution court in Alameda County to facilitate

the collection of restitution fines and orders. The program was established with the concurrence and support of the Restitution Committee in Alameda County.

Government Code Section 13963(f) requires the State to pay a rebate to the county Probation Department or the county agency responsible for collection of restitution fines and orders owed to the Restitution Fund under Section 13967. Since Central Collections is the only agency responsible for the collection of restitution fines and orders the 10% rebate should continue to be directed to Central Collections.

SCO's Comment

Government Code Section 13963(f) states, "The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. . . ." Collection is defined as the act or process of collecting. The collection process for state victim compensation begins with the initial filing of a claim by the victim. The District Attorney's Office is a key element in initiating the county's collection process because the office is responsible for filing victim restitution claims with the court. If the claims are not filed in a timely manner, they may not be included in the court order. Consequently, the collection process can go no further.

FINDING 2— Administration fees not charged

Alameda County did not include a 10% administration fee on the restitution fines collected. The county added an administration fee only to the restitution orders paid by the defendants. The fee was not implemented because the board of supervisors has not adopted a resolution that will add the administration fee.

Penal Code Section 1202.4(l) provides that the board of supervisors may impose a fee to cover the actual administrative cost of collecting the restitution fines, not to exceed 10% of the amount ordered to be paid. Additionally, *Penal Code* Section 1203.1(l) provides that the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution orders, not to exceed 10% of the total amount ordered to be paid. These fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The county should take steps, after a board resolution, to levy the 10% administration fee for the collection of state restitution fines.

County's Response

The County concurs with the recommendation and will seek a board resolution to levy the 10% administration fee for the collection of restitution fines in accordance with *Penal Code* Section 1202.4(l).

As a point of clarification, the County has established a policy by board resolution for adding an administrative fee to restitution orders as cited in *Penal Code* Section 1203.1(l). Central Collections has been adding the administrative fee on restitution orders for several years.

Appendix— Transaction Flow for Court-Ordered Restitution July 1, 2001, through June 30, 2002

The following narrative describes the court-ordered restitution process for the various entities in Alameda County involved in court-ordered restitution.

District Attorney's Office

There are two types of restitution: direct victim restitution and Victim Compensation and Government Claims Board (Board) restitution. Regarding Board restitution, when a person is a victim of a crime documented in an official police report, he or she is entitled to apply for Board assistance by filing a claim with the local Victim Witness Center (VWC). Once filed, a claim is processed by the VWC and transferred to the State for payment. To ensure that Board restitution orders are imposed, the Board payment information must be presented in court at the time of sentencing. The District Attorney's Office receives notification from the Board on a date uniquely referred by the office as "Date to County." The staff enters the information into a database to link the claim with the defendant's file or docket. At sentencing, the District Attorney's Office informs the Probation Department about the Board claim and payment history. Then the probation officer prepares a sentencing report for the judge who will make the Board restitution order. When Board claims are filed after the sentencing date, claims are much more difficult to file against the defendant because he or she must be brought back from prison into court.

Alameda County Court

Upon conviction, the court is responsible for disclosing fines and claims filed against the defendant. Upon sentencing, the court prepares a court order (i.e., Sentence/Probation Order) and includes a restitution order (i.e., Judgment and Victim Restitution Order). Each court case has a court docket number assigned. If the defendant is sent to prison, the collection responsibility lies with the State Prison Authorities. If the defendant is placed on formal probation, the collection responsibility is with the county Probation Department. The Probation Department delegates activities to the county's Central Collections Division.

Probation Department

Each defendant is assigned a probation officer. If the defendant's file includes a victim compensation claim, the officer prepares a collection order. This is sent to the Central Collections Division.

Central Collections Division

The Central Collections Division relies on the court, the Probation Department, the District Attorney's Office, and the local VWC to provide the information to proceed with the collection process. Collections and distributions are summarized on a regular basis. The information is checked against the court's database and victim claim orders. The appropriate department is notified if any errors exist.

**Attachment—
County's Response
to Draft Audit Report**



ALAMEDA COUNTY
AUDITOR-CONTROLLER AGENCY
PATRICK O'CONNELL
AUDITOR-CONTROLLER/CLERK-RECORDER

November 21, 2003

Jerry McClain
Chief, Special Audits Bureau
State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250

Dear Mr. McClain:

Attached please find Alameda County's response to an audit performed by your staff regarding the collection of court restitution fines and orders reported to the Victim Compensation and Government Claims Board for the period of July 1, 2001, through June 30, 2002.

After reviewing the attached responses to Finding 1, and Finding 2, please call me if you should have questions or would like to discuss the responses further. Your cooperation and attention to this matter are greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Steve Manning".

Steve Manning
Chief Deputy Auditor

cc: Patrick O'Connell, Auditor-Controller
Art Sims, Alameda County Superior Court

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Connie Land
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**FINDING 1-
Restitution 10% rebate
not applied to collection
activity**

Alameda County did not distribute \$115,439 of statutory restitution rebate revenues to the Probation Department or other county agencies responsible for the enhancement of restitution fines and orders. The revenue has been posted to the Central Collection Division's fund for general collection activities when operating cost is offset by the department's comprehensive collection program. The error occurred because the county misinterpreted *Government Code* Section 13963(f) to include general collection activity. Failure to make the required distribution of the statutory rebate has not provided the intended collection enhancement under the statute.

Government Code Section 13963(f) requires the State to pay a rebate to the county Probation Department or the county agency responsible for collection of restitution fines and orders owed to the Restitution Fund under Section 13967. Additionally, the rebate shall be considered an incentive for the collection efforts and shall be used for furthering the collection efforts. The rebate shall not be used to supplant county funding.

Recommendation

The county should allocate the 10% rebate revenues to the Probation Department, District Attorney's Office, or other county agencies responsible for collection of court-ordered victim restitution on behalf of the Victim Compensation and Government Claims Board.

In addition the county should institute procedures to assure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board to discuss returning the funds.

County Response

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directed to Central Collections.

FINDING 2
Administrative fees
not charged

Alameda County did not include a 10% administration fee on the restitution fines collected. The county only added an administration fee to the restitution orders paid by defendants. The fee was not implemented because the Board of Supervisors has not adopted a resolution that will add the administrative fee.

Penal Code Section 1202.4(l) requires that the Board of Supervisors may impose a fee to cover the actual administrative cost of collecting the restitution fines, not to exceed 10% of the amount ordered to be paid. Additionally, *Penal Code* Section 1203.1(l) requires that the Board of Supervisors may add a fee to cover the actual administrative cost of collecting restitution orders, not to exceed 10% of the total amount ordered to be paid. These fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The county should take steps, after a board resolution, to levy the 10% administration fee for the collection of restitution fines.

County Response

The County concurs with the recommendation and will seek a board resolution to levy the 10% administration fee for the collection of restitution fines in accordance with *Penal Code* Section 1202.4(l).

As a point of clarification, the County has established a policy by board resolution for adding an administrative fee to restitution orders as cited in *Penal Code* Section 1203.1(l). Central Collections has been adding the administrative fee on restitution orders for several years.

**State Controller's Office
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